

[Handwritten signature]

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



APR 09 2003

File: WAC 01 288 56663 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

[Handwritten signature: Allen E. Crawford for]
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a ranch. It seeks to employ the beneficiary permanently in the United States as a horse trainer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is October 1, 1996. The beneficiary's salary as stated on the labor certification is \$2,535.87 per month or \$30,430.44 per annum.

Counsel submitted copies of the petitioner's 1996 through 2000 Form 1120S U.S. Income Tax Return for an S Corporation. The tax return

for 1996 reflected gross receipts of \$0; gross profit of \$0; compensation of officers of \$0; salaries and wages paid of \$257,306; an ordinary income (loss) from trade or business activities of -\$1,211,607; and net current assets of \$20,812. The 1997 federal tax return reflected gross receipts of \$0; gross profit of \$0; compensation of officers of \$0; salaries and wages paid of \$183,263; an ordinary income (loss) from trade or business activities of -\$624,883; and net current assets of \$23,761.

The tax return for 1998 reflected gross receipts of \$0; gross profit of \$0; compensation of officers of \$0; salaries and wages paid of \$117,993; an ordinary income (loss) from trade or business activities of -\$620,199; and net current assets of \$98,123. The 1999 federal tax return reflected gross receipts of \$0; gross profit of \$0; compensation of officers of \$0; salaries and wages paid of \$95,047; an ordinary income (loss) from trade or business activities of -\$435,123; and net current assets of \$12,537. The 2000 federal tax return reflected gross receipts of \$5,305; gross profit of \$3,152; compensation of officers of \$0; salaries and wages paid of \$132,338; an ordinary income (loss) from trade or business activities of -\$822,411; and net current assets of \$28,133.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel re-submits copies of the petitioner's 1996 through 2000 federal tax returns and argues that:

Here, the petitioner offers as proof of their ability to pay the beneficiary's salary their 1996 through 2000 U.S. Corporate Income Tax Return, line item 8, shows that the petitioner had paid the salaries and wages of in excess of \$95,047.00 each year, thus serving as evidence of the petitioner's ability to pay the beneficiary's proffered salary.

Counsel has provided no evidence of the salary paid to the beneficiary as claimed in his argument. If the petitioner paid the beneficiary a salary, there should be W-2 Forms or 1099-MISC available to submit as evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner's Form 1120S for calendar year 1998 shows net current assets in excess of the proffered salary. The petitioner

could pay a proffered salary of \$30,430.44 in that year.

The petitioner's 1996, 1997, 1999, and 2000 federal tax returns, however, show an inability to pay the wage offered.

The petitioner must show that it had the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status. See 8 C.F.R. § 204.5(g)(2).

Accordingly, after a review of the federal tax returns, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing to present.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.